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**BZA-1881  
SARA MALONE  
Variance**

**STAFF REPORT  
May 16, 2013**

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**REQUEST MADE, PROPOSED USE, LOCATION:**

Petitioner, who is the property owner, is requesting a variance to permit a rear setback of 9' instead of the required 25' to enclose an existing deck. The property is located at 200 Jennings Street in University Farms Subdivision, West Lafayette, Wabash 5 (SW) 23-4. (UZO 4-2-2)

**AREA ZONING PATTERNS:**

This lot is zoned R1, Single-Family Residential. All surrounding lots are zoned R1. This two-story single family home was constructed in 1987.

Two variances were approved in 2005 for a home to the southeast of the subject property at 210 Floyd Ct (BZA-1684). The variances approved were a 5' side setback instead of the required 6' setback and a 13' rear setback instead of the required 25' to both legitimize the existing house and construction an addition.

**AREA LAND USE PATTERNS:**

This area of West Lafayette is dominated by single family homes.

**TRAFFIC AND TRANSPORTATION:**

This site is located on a cul-de-sac at the end of Jennings Street, and urban local road according to the *Thoroughfare Plan*.

**ENVIRONMENTAL AND UTILITY CONSIDERATIONS:**

Public utilities serve the site.

The proposed addition would extend one foot in the 10' utility/drainage easement along the rear property line. The drainage easement that follows the rear property line is a depression of approximately 4' from the elevation at the rear of the house. If this variance is approved the petitioner would need to acquire a utilities/drainage encroachment agreement approved by all utility companies and West Lafayette Board of Public Works and Safety and address the University Farm subdivision covenants that require a 15' minimum rear setback for all primary use buildings.

**STAFF COMMENTS:**

This house was constructed in 1987; the unroofed deck was built at the same time. Petitioner would now like to roof and screen the existing 16' x 33' deck. The deck is attached to the house and has a 9' setback from the rear property line; the ordinance

allows “an unroofed porch, deck or patio” to “extend into a rear setback to within 4’ of the lot line,” (UZO section 4-4-4(c)). However, structures (including decks) are not permitted in utility/drainage easements.

This addition poses no potential threat to adjacent properties but does encroach into the 25’ rear setback. The subdivision covenants for University Farms Phase 1, state that no dwelling can be closer than 15’ from the platted rear lot line. This home is constructed at the front setback extending to the rear setback. Petitioner can build only an addition/screened porch adjacent to the living area on the east side of the house.

Petitioner has stated her reasons for requesting this variance are to shield the sun from the porch and to reduce heat in the living area of the home. The petition states that the sun coming into the house increases the electric bill and makes the deck unusable during the day.

Staff can think of other ways to address these concerns that would not involve a variance. A few options that staff has seen used by other citizens to address similar issues are build a fence, plant trees to block the sun, or construct a pergola atop the existing deck. An awning attached to the home might also work.

If the board approves this variance the petitioner must gain approval from utility companies and the West Lafayette Board of Works for an encroachment agreement and she must also amend the University Farms Subdivision Covenants in the manner as follows:

“The foregoing covenants, restrictions and conditions shall run with the land and shall be binding on all parties on or claiming any interest in any lot, or part thereof, in said Subdivision and all persons claiming under them...unless by vote of the majority of the then owners of the lots, it is agreed to change or abolish said covenants in whole or in part.””

Regarding the ballot items:

1. The Area Plan Commission on May 15, 2013 determined that the variance requested **IS NOT** a use variance.

And it is staff’s opinion that:

2. Granting this variance **WILL** be injurious to the public health, safety, and general welfare of the community. Allowing the home to be constructed in the utility/drainage easement will prevent full use of the easement for drainage and by utility companies.
3. Use and value of the area adjacent to the property included in the variance request **WILL NOT** be affected in a substantially adverse manner. Allowing the addition to be constructed will not prevent adjacent properties from being used residentially. If the addition were permitted, there is still sufficient light and air for all surrounding properties.

4. The terms of the zoning ordinance are being applied to a situation that **IS** common to other properties in the same zoning district. This lot meets the minimum lot size for the R1 zone and no topography limitations exist on this property.
5. Strict application of the terms of the zoning ordinance **WILL NOT** result in an unusual or unnecessary hardship as defined in the zoning ordinance. This request is being facilitated by the petitioner's desire to shield the patio/rear door from the sun and rain. While shade provided by a roof may be desirable, other options are available. The ordinance clearly states that a self-imposed situation is not considered a hardship. Most homes in the area are built to platted setbacks and in the same fashion as this single family home. While, the deck is permitted in the rear setback, having a screened in porch is not a necessity for a single family home.

**Note:** Questions 5a. and 5b. need only be answered if a hardship is found in Question 5 above.

5a. The hardship presented by the petitioner **IS** self-imposed because the existing deck is conforming and complying with ordinance standards. It is only her desire to enclose and roof the deck that necessitates this variance.

5b. The variance sought **DOES NOT** provide minimum relief because other options are available to provide shade to the deck.

**STAFF RECOMMENDATION:**

Denial

If approved, the following two conditions must be met prior to issuance of an ILP:

1. Approval of an encroachment agreement by all utility companies and approval by the West Lafayette Board of Public Works and Safety; and
2. Relief from covenants by amendment of University Farms Subdivision Phase 1 Protective Covenants.